IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 720 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PUNJIBEN KHUSHALBHAI VANKAR & 3

Appearance:

MR KC SHAH, APP for Petitioner

MR JM BUDDHBHATTI for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/08/2000

ORAL JUDGEMENT

1. Appellant- State of Gujarat, has preferred this acquittal appeal under sec. 378 of CrPC against the

impugned judgment and order dated 5.7.1991 passed by the learned Judicial Magistrate (F.C.), Idar in Criminal Case No.678/89 whereby the learned Magistrate acquitted the respondents- original accused for the offences punishable under sec.323, 504 R/w Sec.114 of the IPC and under sec.135 of Bombay Police Act.

2. Respondents (hereinafter referred to as the original accused) were prosecuted for the offences punishable under sec.323, 504 R/w sec.114 of IPC and also under sec.135 of Bombay Police Act. The case of the prosecution is that on 5.6.1989, at about 16.55 hours, original complainant Virabhai Karsanbhai was assaulted by original accused at village Bhavangadh. Complainant Virabhai is son-in-law of original accused nos. 1 & 4. He had been to Bhavangadh at the place of his in-laws to take her wife where incident had occurred and complainant was beaten by stick, piece of wood and was also given fist blows. After trial, learned Magistrate acquitted the accused by giving benefit of doubt to all of them. Feeling aggrieved by the order of acquittal, the State has preferred present appeal.

3. I have gone through entire judgment of the learned Magistrate.I have also gone through oral evidence led by the prosecution. It seems that the police registered complaint under sec. 154 of CrPC as the offence punishable under sec.135 of Bombay Police Act was disclosed and investigation was carried out by the police.The original accused were, therefore, chargesheeted, otherwise a non-cognizable case could have been registered. Undisputedly, original complainant was beaten at the house of original accused persons even as per the prosecution case. So, it is doubtful whether police could have chargesheeted accused for the offence punishable under sec.135 of Bombay Police Act. Holding a piece of wood lying in the house or a stick in the hand of a person who is at his house, whether can be prosecuted for such an offence, is the biggest question. But without going into the merits of this part of evidence, it is clear from the record that the prosecution has neither produced nor proved notification of prohibition published under sec.37(1) of the Bombay Police Act. Under the circumstances, the accused were otherwise required to be acquitted for this charge.

4. Learned Magistrate has considered oral evidence of the injured complainant Virabhai who has narrated the entire incident. There are some improvements and contradictions qua the complaint lodged by him and in my view, some of them are material improvements and contradictions tilting the balance in favour of the

accused. Two material eye-witnesses referred by the complainant in the complaint exh.30 i.e. witnesses Babubhai Karsanbhai and Dhulabhai have not supported the case of the complainant. It is in evidence of the complainant that his wife Jethiben was also present but she has not been examined by the prosecution. It seems that the complainant has tried to suppress the genesis of the crime. It also transpires that he must have tried to carry his wife with him forcibly and probably with the help of Kailashgiri Bavaji and Manaji Thakor who undisputedly do not belong to the community of the original complainant as well as original accused.

5. I agree that the medical evidence produced and proved by the prosecution to some extent helps the case of the prosecution and it could be argued that the original complainant Virabhai gets corroboration from the medical evidence. Four injuries were found on the body of the complainant, but all these injuries are simple in nature and careful scrutiny of medical evidence led by the prosecution, reveals that it would not be safe to hold that medical evidence corroborates the case of prosecution. Age of injuries noticed by the doctor is most relevant. Late filing of FIR by 20 hours is also another relevant and important aspect which goes to the root of the matter and strikes the credibility of the oral evidence of the complainant and shakes the credibility of the medical evidence available on record. In nutshell, findings of the learned Magistrate leading to acquittal of the accused do not require any interference. It is settled legal position that unless findings of the trial Court are patently illegal or perverse, acquittal normally should not be interfered with. Here in the instant case, the accused are given benefit of doubt and, in view of the facts and circumstances of the case and evidence on record, the learned Magistrate has rightly given this benefit. I am in full agreement with the reasoning given, findings arrived at and conclusions reached by the learned Magistrate in acquitting accused as the same being just, legal and proper and, therefore, no interference is warranted.

6. For the reasons aforesaid, appeal fails and is hereby dismissed. Impugned judgment and order dated 5.7.1991 passed by learned Judicial Magistrate (First Class), Idar in Criminal Case No.678/89 acquitting the respondents accused, is hereby confirmed.

2.8.2000 [C.K. BUCH, J]
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